

Under Illinois law, persons who affix tangible personal property to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of that tangible personal property. 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

December 11, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated September 20, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your email, you have stated and made inquiry as follows:

PERSON of our office called today and received conflicting opinions about assessment of sales tax of a new (proposed) precast concrete basement wall manufacturer. This product, NAME, will form and cast basement wall sections and will ship them to a subcontractor for installation on the job site for a general contractor. As I understand it, this manufacturer should charge sales tax to the construction contractor because the contractor is creating real estate, unless the real estate is being created for an exempt organization.

This situation seems very close to the COMPANY situation where they charge a sales tax. Please see enclosed schematic which shows the similarity of these two businesses.

Please respond in writing, via fax at ####, a verification stating this law as the company is proposing to fund needed infrastructure with a portion of the City's 1% sales tax.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Persons who engage in selling tools, equipment, fuel, supplies, and other tangible personal property to construction contractors, real estate developers or speculative builders for use or consumption incur Retailers' Occupation Tax liability when making such sales. Also, persons who (apart from acting as construction contractors themselves) engage in selling building materials, fixtures, plants and other tangible personal property to construction contractors, speculative builders or real estate developers, who convert such items into real estate so as to take such items off the market as tangible personal property, incur Retailers' Occupation Tax liability when making such sales. 86 Ill. Adm. Code 130.2075(a)(1).

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. Be advised that persons who take tangible personal property and affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961).

The customers of construction contractors incur no Use Tax liability, and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the contractors for their tax liability. Please note that this reimbursement cannot be billed to customers as "sales tax," but can be listed on the bills as a reimbursement of tax. If the bill reflects "sales tax," the contractor is making an overcollection of tax. All overcollections must either be turned over to the Department or refund to the customer. Knowing overcollection of tax constitutes a Class 4 felony.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Shane McCreery

By:

Jerilynn T. Gorden

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Enc.